

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of	)	
	)	WC Docket No. 03-211
Vonage Petition For Declaratory Ruling	)	

**Comments of Cinergy Communications Company**

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October 27, 2003

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Cinergy Communications Company (“CCC”) is a CLEC providing services in Kentucky, Indiana, Tennessee, Ohio, Illinois and Missouri. We provide services utilizing both the unbundled network element platform (“UNE-P”) as well as facilities-base services utilizing our own Class 5 switch. We are in the process of rolling out a new product known as Superlink VBX™. Superlink VBX™ is a virtual PBX replacement. This product provides our small business customers all the features and functionalities of an expensive PBX system, plus many features that a PBX cannot provide, without the up-front capital expenditure required of a PBX system. Superlink VBX™ is a digital service delivered to the customer via a broadband connection utilizing the IP protocol.

CCC believes that Voice over Broadband (“VoBB”) services such as Superlink VBX™ and Vonage’s voice service are telecommunications services and not information services. CCC previously took this position in comments filed in CC Docket No. 02-33 on May 3, 2002, and we maintain that position today. By these comments we request that the FCC take action to regulate all such services under Title II of the Telecommunications Act.

Voice service is and always has been recognized as a telecommunications service regardless of the transport mechanism. Voice is currently converted to packets in the backbone of ATM networks. This is fundamentally no different than routing these same packets through the public internet. The fact that the method of delivery is by digital packets instead of analog circuits does not automatically change the character from telecommunications service to information service.

The categories of “telecommunications service” and “information service” contained in the Telecommunications Act of 1996 are mutually exclusive.<sup>1</sup> The term telecommunications service is defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.<sup>2</sup> “Telecommunications,” as defined by the Act, means “the transmission, between or among points specified by the user, of

<sup>1</sup> Wireline Broadband NPRM, CC Docket No. 02-33, ¶ 14.

<sup>2</sup> 47 U.S.C. §153(46)

information of the user's choosing, without change in the form or content of the information as sent and received.”<sup>3</sup>

Vonage's service and Superlink VBXTM both meet this definitional criteria. Both services are offered directly to the public for a fee. The voice is transmitted between points specified by the user by dialing a telephone number on some type of handset which then connects the user to the called party in real time. The voice is not stored, transformed, processed as would be the case with an information service.<sup>4</sup> Moreover, the definition of information excludes these functions for the management of a telecommunications service.<sup>5</sup> Therefore, although software is utilized to provide the service, it is nothing more than management of the telecommunications service.

Apart from the purely legal reasons why VoBB service should be classified as telecommunications, there are also important public policy and competitive reasons for doing so. To the extent these services are not regulated under Title II, none of the regulatory requirements such as the Universal Service Fund or e911 requirements apply. Although this is desirable to a competitor such as Vonage, it is not in the public interest.

The Universal Service Fund is under great pressure now due to declining long distance rates. To the extent VoBB providers are not subject to these payments, carriers will attempt to have their services classified in like fashion. Carriers that choose to continue providing telecommunications service will be in a competitive disadvantage vis a vis the unregulated VoBB providers. As more and more carriers switch to VoBB, the pool of telecommunications providers will shrink and the burden for funding the Universal Service Fund will fall on fewer and fewer users. This will result in an increase in fees (creating an even greater regulatory burden), a reduction in benefits that are available to rural and underserved areas, or ultimately a failure of the fund.

e911 is another area in which regulation is desirable, or even necessary. Consumers have come to expect and rely upon e911. If VoBB providers are relieved of this burden, costs for consumers of these services will be lowered. Customers may choose to go with the VoBB provider based upon price and not realize that they have not purchased a fully functioning e911-capable service until an emergency arises. Although there may be warnings and disclaimers, it is doubtful that the consuming public will understand the impact of their decision until it is too late. Although the trial lawyers will have a say in the outcome of this type of noncompliant service, change through litigation comes slowly and at great social cost. For this reason, all providers should be held to the same standard in the public interest.

In summary, if it looks like a duck, walks like a duck and quacks like a duck, then it should be treated like a duck. VoBB is a telephony service like any other, except for the technology used to deliver the service. All voice services should be treated equally and be required to meet all of the same regulatory requirements. To the extent the FCC does

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<sup>3</sup> 47 U.S.C. § 153(43)

<sup>4</sup> 47 U.S.C. § 153(20)

<sup>5</sup> Id.

not step in and declare these services to be telecommunications, the market will be driven to provide unregulated services with a lower cost to the consuming public. When that happens the public will suffer.

Respectfully submitted,

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